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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY. AND BRIEF IN SUPPORT THEREOF.

CLEMENT K. CORBIN,
Counsel for Petitioner.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Charles F. Blackton (hereinafter called petitioner), respectfully presents this petition for a writ of certiorari to review the final judgment of the New Jersey Court of Errors and Appeals, the highest Court of the State of New Jersey in which a decision in the above entitled cause could be had, rendered April 30, 1937. (R. 52.)

Statement of the Case.

On January 9, 1934, respondent recovered a judgment of $500 and costs against Horace Findlay. On February 2, 1934, he obtained an order for execution against wages (R.

12). This order was against the wages and income due to Findlay from his employer, Erie Railroad Company, and required the railroad company to pay over to the constable of the court the sum of $10 every pay day until the judgment was satisfied (R. 31-32, Exhibit P-3 (C)).

A copy of the writ was served on the petitioner who was superintendent of the marine department of the railroad company (R. 15). Findlay, at the time of the service of the writ, was employed as a captain of the tug Waverly, a United States registered vessel (R. 18-21). The Waverly operated within the lighterage limits of the New York Harbor (R. 19). His hours of duty were from 4 P. M. to 12 P. M. (R. 20). The petitioner did not deduct any part of Findlay's wages (R. 17). The treasurer of the railroad company by letter returned the writ and advised the clerk of the court that Findlay's employment exempted his wages from execution by virtue of the provisions of Section 601 of Title 46 of the United States Code Annotated (R. 35, Exhibit P-3 (E)).

Suit was then instituted by the respondent against the petitioner, predicated on the provisions of a New Jersey Statute (Chapter 204, P. L. 1924, Section 12, 1 Cum. Supp. to Compiled Stats., pg. 982), which made liable the proper officer of a corporation who failed or refused to pay over to the officer presenting the execution the percentage of the indebtedness as shown therein. Motions for nonsuit and direction of a verdict on the grounds that the wages of seamen were exempt from execution by virtue of the provisions of Section 601, Title 46 of the U. S. C. A. were denied. Judgment was entered in favor of the respondent and against the petitioner for the sum of $106 and costs (R. 22-25). Petitioner appealed to the New Jersey Supreme Court. This Court assumed that Findlay was a seaman but held, in affirming the judgment, that seamen engaged in coastwise trade were not entitled to the exemption provided for in Section 601 of Title 46, of the U. S. C. A., because Section 544 of Title

46 of the U. S. C. A. limited the provisions of Section 601 (R. 41-46).

Petitioner appealed the judgment of the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals. The New Jersey Court of Errors and Appeals affirmed the judgment of the New Jersey Supreme Court for the reasons expressed in the opinion of the Supreme Court. (R. 52).

Questions Presented.

1. Whether Section 12 of the Act of March 4, 1915, Chap. 153, Title 46, United States Code Annotated, Sec. 601, is limited by the Act of June 9, 1874, Chap. 260, Title 46, United States Code Annotated, Sec. 544, so that the wages of seamen engaged in the coastwise trade are subject to seizure under execution issued out of a State court.

2. Whether the master of a vessel is a seaman within the meaning of Sec. 12 of the Act of March 4, 1915, Chap. 153, Title 46, United States Code Annotated, Sec. 601.

Reasons for the Petition.

The reasons for which this petition is presented are:

1. That the New Jersey Court of Errors and Appeals has rendered a decision where is drawn in question the validity of a State statute which is repugnant to the laws of the United States (Sec. 344 (b), Title 28, United States Code Annotated, p. 206).

2. The New Jersey Court of Errors and Appeals has decided a Federal question of substance not heretofore determined by this Court. (Rule 35, Sec. 5 (a), Title 28, United States Code Annotated, p. 424.)

3. The decision of the Court of Errors and Appeals, while in accord with a decision of the Supreme Court of

Alabama, is in conflict with the law as laid down in the Federal Court, and the law as laid down in the courts of the States of New York and Illinois, and the petitioner, who is a superintendent of marine transportation of a railroad company doing business in several of the States of the United States, requires the decision of this Court for guidance in such cases.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue to the New Jersey Court of Errors and Appeals and submits hereto annexed brief in support of his petition.

Respectfully submitted,

CLEMENT K. CORBIN,
Attorney for Petitioner.

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BRIEF IN SUPPORT OF PETITION.

I.

The wages of seamen including those engaged in coastwise trade are exempt by Federal law from execution.

The New Jersey Court of Errors and Appeals in ruling that the wages of a seaman engaged in coastwise trade are exempt from execution, did so strictly on the decisions of *Inter-Island Steel Navigation Co. Ltd.* v. *Byrne*, 239 U. S. 459, and *Duggar* v. *Mobile & Gulf Co.*, 224 Ala. 359; 140 So. 614, 616, saying:

> "Such was the conclusion reached in those cases after a discussion and consideration of the exemption originally given by the Act of Congress, June 7th, 1872, Sec. 61, (17 Stat. 276) to wages due to seamen, in view of the Act of Congress June 9, 1874 (18 Stat. 64, 46 U. S. C. A. Sec. 544.)"

The New Jersey Court of Errors and Appeals did not take into consideration the fact that Section 61 of the Act of June 7, 1872, which became Section 4536 of the Revised Statutes entitled: "An act to authorize the appointment of Shipping Commissioners * * *" and which provided, (17 Stat. 262-276):

> "That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; * * *"

as limited by the Act of June 9, 1874, Chap. 260, (18 Stat. 64) which provided:

> "That none of the provisions of an act entitled 'An Act to appoint Shipping Commissioners * * *' shall apply to sail or steam vessels in the coastwise trade * * *"

was expressly repealed on March 4, 1915, by an Act entitled: "An Act to Promote the Welfare of America Seamen in the Merchant Service of the United States," Section 12 of which provides (38 Stat. 1169):

> "That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding * * * any attachment, encumbrance, or arrestment thereon; * * * This section shall apply to fishermen employed on fishing vessels as well as to seamen; * * * Section forty-five hundred and thirty-six of the Revised Statutes of the United States is hereby repealed."

In failing to give consideration to the repealing section of the last mentioned statute, the Court of Errors and Appeals fell into error as to the effect of the decision of this Court in the case of *Inter-Island Steam Navigation Co.* v. *Byrne*, and overlooked the fact that the *Byrne* case which

was decided on facts arising prior to the effective date of the Act of March 4, 1915 held that the Act of 1872 was limited by the Act of 1874, but did not construe the Act of March 4, 1915. It is, therefore, obvious why Mr. Justice McReynolds in delivering the opinion of this Court in the *Byrne* case, when referring to the case of *Wilder* v. *Inter-Island Steam Navigation Co.*, 211 U. S. 239, wherein was reserved the question of whether the 1874 Act repealed the 1872 Act said, page 463 (italics ours):

> "The particular point now presented was reserved in Wilder v. Inter-Island Navigation Co., 211 U. S. 239, 245. *It has become of less importance since the Act of March 4, 1915, c. 153, 38 Stat. 1164, 1169, wherein the provisions of Sec. 61 of the Act of 1872 were re-enacted.*"

In deciding the instant case, the New Jersey Court of Errors and Appeals disregarded the interpretation of the *Inter-Island Steam Navigation Co.* case made in 1921 by the Circuit Court of Appeals for the First Circuit in *Burns* v. *Fred L. Davis Co.*, 271 Fed. 439. In the *Burns* case, the court said, by Bingham, C. J., at page 441 (italics ours):

> "In 1915 Congress repealed section 4536 of the Revised Statutes, and enacted in its stead section 12 (38 Stat. at Large, c. 153, Sec. 12, p. 1169 (Comp. St. Sec. 8325a)), which reads as follows:
>
> "'SEC. 12. That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, * * *'
>
> "The language of section 12 is not materially different from that of section 4536 of the Revised Statutes, * * *.
>
> "But the effect to be given to the language of section 12, as compared with the equivalent language of section 4536, is quite different, for the Act of June 9, 1874 (18 Stat. at Large, c. 260, p. 64 (Comp. St. Sec. 8291)), made section 4536 inapplicable to seamen

employed on vessels 'engaged in the coastwise trade, * * *'

> *"By the enactment of section 12, which repealed section 4536 of the Revised Statutes, the limitation placed upon the language of that section by the Act of June 9, 1874, has been removed. Inter-Island Navigation Co.* v. *Byrne,* 239 U. S. 459, 463, 36 Sup. Ct. 132, 60 L. Ed. 382."

That the decision of the New Jersey Court of Errors and Appeals in the case *sub judice* is in conflict with *Burns* v. *Fred L. Davis Co., supra,* and in conflict with *Inter-Island Steam Navigation Co. v. Byrne, supra,* appears from the following comment in Rose's Notes on U. S. Reports (1926) Rev. and Supp., Vol. 5, page 504 (italics ours):

> "239. U. S., 459-463—Inter-Island Steam Nav. Co. *v.* Byrne. Amendment of 1874 rendered provisions of Act of 1872, relative to protection of seamen's wages, inapplicable to vessels in coastwise trade.
>
> "Followed in Burns *v.* Fred L. Davis Co., 271 Fed. 442, holding Mass. Rev. Laws, C. 187, Sec. 31, authorizing seizure of fishermen's wages under trustee process, is void under Act of 1915, Sec. 12, *which repealed Rev. Stats., Sec. 4536, and removed limitation placed upon it by Act of 1874.*"

The decision below is likewise in conflict with *Ornstein* v. *Pittsburgh S. S. Co.,* 209 Ill. App. 202, and with *Manufacturers Trust Company* v. *Anderson,* 287 N. Y. Supp. 178.

In the *Ornstein* case the Illinois Appellate Court in 1916 held the exemption could be availed of by a seaman in the lakegoing trade (a trade in the same class with the coastwise trade by the provisions of the Act of June 9, 1874, C. 260, 18 Stat. 64).

In *Manufacturers Trust Company* v. *Anderson,* which was followed by *Migliaccio* v. *Cappola,* 289 N. Y. S. 891, the Supreme Court of New York, Appellate Division, held

the wages of a longshoreman were exempt from execution because of the provisions of Section 12 of the Act of March 4, 1915 (46 U. S. C. A. 601), saying:

> "In our opinion the Seaman's Act of 1915 (38 Stat. 1164), was more than a reenactment of the law of 1872, for the reason that the wages of 'fishermen' (not included in the Act of 1872) and all 'seamen' are made exempt from execution and attachment (Sec. 12, 46 U. S. C. A. 601) * * *."

While it is true that the Alabama Supreme Court in *Duggar* v. *Mobile & Gulf Nav. Co.*, 239 U. S. 459, ruled that the wages of seamen engaged in coastwise trade are exempt from execution, it did so because it misconceived the effect of the adoption of the U. S. Code by Act of June 30, 1926, Chapter 712 (44 Stat. 777). The court in the *Duggar* case conceded that *Burns* v. *Fred L. Davis Co.*, 271 Fed. 439, was a holding that the Act of 1874 was not a limitation on Sec. 12 of the Act of 1915 before the adoption of the United States Code, but concluded (without citing any authority therefor) that merely because both the Act of 1874 and the Act of 1915 were included in the United States Code, such inclusion evidenced an intent of Congress to make the former Act a limitation on Sec. 12 of the latter. The latter assumption was of course a patent error, for it is obvious that in the adoption of the United States Code, Congress had no intention of changing existing laws in any way, but desired merely to adopt a handy single-volume compilation of the existing federal laws.

That the United States Code of 1926 in no way made any change in the existing law is clear from the following extract from the enacting clauses of the Code Act (Act of June 30, 1926, Chap. 712, 44 Stat. 777) (italics ours):

> "(a) *The matter set forth in the Code,* evidenced as hereinafter in this section provided, *shall establish*

> *prima facie the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925;* but *nothing in this Act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code.* In case of any inconsistency arising through omission or otherwise between the provisions of any section of this Code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments."

Interpreting the above provision, this Court has held that the inclusion of a statute in the Code does not operate as a re-enactment of such statute. *Smiley* v. *Holm,* 285 U. S. 355, 373.

The effect of the Code is clearly stated in *Olson* v. *Mellon* (D. C. W. D. Pa.), 4 F. Supp. 947, 949:

> "The Code Act of 1926 repealed or amended no existing law, but was designed only to set forth the United States statutes as they existed on December 7, 1925."

It is obvious that the New Jersey Court of Errors and Appeals in following the *Duggar* case also misconceived the effect of the adoption of the United States Code, and that its decision is in conflict with the view as expressed by this Court in *Inter-Island Steam Nav. Co.* v. *Byrne,* as well as the law as laid down in the Federal court and State courts in Illinois and New York.

Petitioner submits that this Court should grant a writ of certiorari to review the decision of the New Jersey Court of Errors and Appeals.

II.

A master of a vessel is a seaman within the meaning of Section 12 of the Act of March 4, 1915, Chapter 153, Title 46, United States Code Annotated, Section 601.

The New Jersey Court of Errors and Appeals did not pass on the question of whether or not a master of a vessel

was a seaman within the meaning of Section 12 of the Act of March 4, 1915, although it assumed that he was such, saying:

> "Now Findlay, being engaged in the coastwise trade (and we assume as a seaman) cannot claim the exemption allowed seamen. * * *"

That a master is a seaman within the provisions of Section 12 of the Act of March 4, 1915, is evident from the statutory definition of the word "seaman" as appears in Revised Statutes, Sec. 4612, Title 46, U. S. C. A., Sec. 713, and is in accord with the views expressed by this Court in *Uravic* v. *F. Jarka Co.*, 282 U. S. 234.

Revised Statutes, Sec. 4612, provides (italics ours):

> "SEC. 4612. In the construction of this title, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and *every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman';* * * *"

It is clear that Sec. 4612 brings "every person (apprentices excepted) who shall be employed to serve in any capacity on board any vessel" into the class of "seaman." Only apprentices are excepted from the definition of "seaman," and, under the rule that an express exception excludes all other exceptions, masters are necessarily included in the definition of "seaman."

The liberal view of this Court in the interpretation of Sec. 4612 is shown in its opinion in *Uravic* v. *F. Jarka Co.*, *supra*, wherein Mr. Justice Holmes said in reference to that section, at page 239:

> "But that section merely provides that for the purposes of the chapter 'Seaman' shall include persons

who otherwise might be deemed not to be seamen. It is directed to extension, not to restriction, as remarked by Judge Crane in Resigno *v.* F. Jarka Co., 248 N. Y. 225, 242."

Conclusion.

For the foregoing reasons we respectfully submit that this Court should grant a writ of certiorari to review the final judgment of the New Jersey Court of Errors and Appeals.

Respectfully submitted,

CLEMENT K. CORBIN,
Attorney for Petitioner.

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